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THE STATE AND THE RAILROADS

AN ADDRESS DELIVERED

AT THE

THIRD ANNUAL DINNER

OF THE

RAILWAY BUSINESS ASSOCIATION

AT THE

WALDORF-ASTORIA

NEW YORK CITY

NOVEMBER 22, 1911

BY

EMMET O'NEAL

GOVERNOR OF ALABAMA

MONTGOMERY, ALABAMA

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"THE STATE AND THE RAILROADS."

Address of EMMET O'NEAL, Governor of Alabama.

Mr. Chairman:

For the very cordial reception you have given me, I return my grateful thanks. It is not, I assure you, the utterance of a mere conventional phrase when I tell you that I am sincerely glad to be with you here to-night. While I appreciate the compliment which your invitation conveyed, I am not unmindful of the fact that the exacting duties of official life furnish but little opportunity for that careful preparation which the importance of this subject demands. Yet although I distrust my capacity to do justice to the occasion, my feelings on the subject were very clearly expressed by the gentleman who was asked whether he believed Lord Bacon wrote Shakespeare's plays. He said in reply to the query: I do not know whether Lord Bacon wrote Shakespeare's plays or not, but I do know that if he didn't he missed the opportunity of his life. So I can say to you that I do sincerely appreciate the spirit of gracious courtesy which inspired your invitation, and that I feel that I could not afford to miss this opportunity of contributing even my small part to the success of a meeting and cause so praiseworthy and patriotic.

I do not know who is the originator of the happy idea out of which this organization with its unique and patriotic purpose has sprung, but nevertheless I desire to extend to him my congratulations, and to express to you the wish that complete success may attend your efforts and that all your hopes may be fulfilled. Surely that body of men who have banded themselves together, to the truly patriotic end, that the railways and the people, each so necessary to and dependent upon the other, may reconcile their differences and march together for the achievement of the common good, merit every encouragement and deserve every praise.

It is manifest that in the condition to which society has progressed neither the railroads nor the people can expand to the full measure of their potential develop-

ment without the sustaining good will of the other, and that any line of policy adopted by one which unduly hinders, retards or lays an oppressive hand upon the other, reacts to its own serious injury. The State, indifferent, in a large measure, to the viewpoint of either, but solicitous to effectuate and secure to the highest degree the common good, should stand, in its sovereign capacity, as a friend to both, and permit by its laws the widest range of liberty that is compatible with the common welfare. The States should, and I feel sure do welcome you as an ally in the promotion of that better feeling, which ripening later as it must, into mutual good will between the railroads and the people, will furnish a secure basis on which to rest the State's guiding laws.

In recent years the regulation and control of railroad rates by governmental agency has become a question of paramount interest. Recognizing that in each of the States the investments in railway property reach to almost inconceivable totals, and that the regulation and control of property so vast, is attended with constitutional questions and governmental policies of extreme gravity, the law-making power should approach the subject in no spirit of passion or prejudice, but with minds free from bias or bitterness, seeking only to reach just and conservative conclusions on the important problems involved, and while fixing rates and other incidentals of public service, to carefully avoid the crippling of these great enterprises, or any impairment of their ability to maintain the proper equipment for the public service, and to earn a fair return on the capital invested. While keeping this just and important spirit steadily in mind, the law-making power must be firm and resolute in curbing and restraining within proper bounds that tendency to independence which, in some instances, has challenged the State's sovereign power. Like the powerful barons of the feudal ages, some of the great railway systems had in former years fancied themselves grown equal to the sovereign power and denying the right of States, whose territory they traversed, within their own bor-

ders, to regulate at all, have curiously produced in this day that romantic period when the Crown of England was required to put forth its power to reduce rebellious vassals to proper positions of fealty and to a recognition of the source from which came their strength.

The tendency of unrestrained power is always towards oppression, and it is logical that the conflict which has arisen between the people and the railroads, or the State and the railroads, should have been of recent development. Its genesis was coincident with the passing of the age of competition. The patronage of the public gravitated naturally to the best service and the lowest rates, and this brought about a condition, which not only prevented the establishment of extortionate rates, but reduced railway earnings to so unremunerative a level as to force that system of co-operation or combination whereby each system was allotted its territory or sphere of influence, and an agreement as to its rate therein. It was at the very beginning of this period that the protection of the general public of what had been the destructive competition between the railroads disappeared, and that that struggle with the States, which now seems to be approaching its deciding and culminating moment, was begun. Recovering from the effects of rate wars between themselves, which had impaired their ability to serve the public and finding in combination, by which the general public was rendered helpless, a fruitful soil for the growth of wealth and power, these great interests became oppressive in their exactions, generating that public hostility which later flowered into laws that were, perhaps in some instances, unduly burdensome. The enforcement of these laws was responsible for the opposition to all the laws and the development of that new doctrine which denies the right to the State government to impose upon the interstate road any regulation of even its intra-state traffic. This was a right never before questioned, but in fact affirmed by the rulings of all the courts until a recent day.

Common carriers have always been a potent factor in the life of the people. In its essence a railroad rate

is a tax on the public. It is a tax on all we eat, consume or wear; upon the homes in which we live; upon all the implements of trade, commerce and agriculture. It is a tax which is not imposed by the government or the State, but by private individuals or corporations, exercising part of the sovereign power of the government, engaged in public enterprises and performing the functions of the State. Upon the right to levy a tax, which resides in the State or Federal Government, every constitution has imposed, in the interests of the people, limitations upon its exercise. If the sovereign power has its limitation in raising revenue from the people for the manifold purposes of the public welfare, it would be strange indeed if that same sovereign power can be denied the right to limit to necessary maintenance and a fair and just return, the right of the most universal and all prevailing taxation—that which, though levied by the power created through its own fiat, touches all classes of the people, and while exercising public functions and armed with the right of eminent domain, is nevertheless operated by private persons for private gain. To deny to the State the right to regulate railroad rates on intra-state shipments, would be to enthrone the railroads above the State, or any other power, expose the citizens of every State to unrestrained and unlimited taxation for private gain and involve the destruction of sovereignty itself.

Looking broadly to the general interests of society, I do not hesitate to affirm that it would be better, even for the railroads, if there were no other alternative, to submit to unjust laws than to have the right of the States to regulate its internal affairs in this regard impaired or utterly destroyed.

The interests of the State, the railroads and the people are necessarily bound together and should never be antagonistic. There may be periods to the domination of one interest or the other in the law-making body, followed by oppression on the one hand or the other, but with the seat of power in the State, the growing recognition on all sides and by all interests of their mutual interdependence on the prosperity of each, will

result in a permanent policy enforced by the laws, from the operation of which each would be, not a hinderer, not an oppressor, but a continuing contributor to the opportunities of the other. No State, approaching the subject in that spirit in which all legislation should be born, could afford to impose unreasonable laws. The Legislature of each State in enacting laws on this important subject should approach the discharge of that grave duty with minds as free from bias or prejudice, with consciences as much bound by the solemnity of an oath, and in an atmosphere as free from improper influences as that in which these laws are construed and enforced.

In all ages among every civilized people no question has been more important than that of transportation. No industrial progress is possible without cheap and easy modes of personal locomotion and property transportation, and the more numerous these become the more rapidly is industrial development furthered, unless the tax they levy destroys gain or withers hope and effort. And in every age the necessity for the governmental control of rates has been recognized and applied. Only recently antiquaries were delighted and students of public affairs brought to realize how old are the policies of government, by bringing to light an inscription written upon a monument of Babylon 2250 years B. C. relating to the laws of that period. In it there were some regulations of the business of transportation. For example:

Section 271. "If a man hire an oxen, a wagon and a driver, he shall pay 180 K. A. of grain per day."

Section 272. "If he hire a wagon only, he shall pay 40 K. A. of grain per day."

Section 276. "If a man hire a sail boat, he shall pay $2\frac{1}{2}$ S. E. of silver per day as its hire."

Section 277. "If a man hire a boat of 60 Gur. tonnage, he shall pay one-sixth of a shekel of silver as its hire per day."

From which it appears, as it was quoted in the United States Senate, that government had been engaged in the supervision of the charges of carriers before the

Hebrew Decalogue and before the days of Abraham. And in the history of that great nation, from which we sprung and whose literature and laws we have inherited, there is found so early even as the reign of William and Mary, that Parliament passed laws regulating the charges of common carriers. The similarity of conditions is plainly shown by the preamble of the Act, which reads:

“And whereas divers wagoners and other carriers, by combination among themselves, have raised the price of carriage of goods in many places to excessive rates and to the great injury of trade, etc.”

Over 200 years ago Lord Hale announced the doctrine that when private property is affected with the public use it ceases to be *juris privati* only. This doctrine the Supreme Court of the United States in the Granger cases declared to be the law of the country—that whenever one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to be controlled by the public for the common good.

The conditions and the principles on which these anciently established and necessary prerogatives of government rest, exist today and the right to exercise them is even more essential. As methods of transportation have improved the necessity to use them under reasonable regulation has proportionately increased. Development beyond the village state is impossible for any inland community without the railroad, and the like development is similarly impossible with extortionate and unregulated charges for the service of the railroad. Deny the power to the State to regulate intra-state rates, and following the inevitable law which links unrestrained power and oppression together, the diminution of intra-state business, the withering of prosperous communities and the failure of others to develop at all, results as an inevitable consequence.

The State cannot, therefore, unless it be under an adverse declaration of the law by the court of last resort, compromise or yield one jot or tittle of its attri-

butes of sovereignty. If the right to regulate intrastate rates reasonably does not reside in the State, it resides nowhere, and the negation of that right would make the strength and power of a mere association of individuals superior to sovereign States and lay their people helpless before predatory exactions.

On this point, as I have stated, the very existence of the State, in its unimpaired powers, depends, and on that point there can of necessity be no compromise, but in the exercise of this power, as I have declared in the beginning, there must be consideration for the best interests of the railways as well as of the people. Confiscatory rates made by the State are as bad as predatory rates made by the railroads. Under neither can there be that equality of opportunity which all our institutions are organized to preserve. I deprecate the spirit of hostility formerly manifested in some of our States, when, under the influence of the appeals of demagogues or time-serving politicians, laws were enacted which denied railroad corporations, under the threat of forfeiture of their charters, the right to appeal from the State to the Federal Courts. I did not hesitate—earnest as I was in the advocacy of proper regulation—to denounce such laws as unconstitutional, because they denied to foreign railroad corporations engaged in business in our States the equal protection of the laws—a position which was subsequently confirmed by the Supreme Court of the United States. Such a law enacted in Alabama was during my administration stricken from our Statute books.

I feel gratified that my own State, lately the theatre of a desperate political struggle between the people and the railroads, has through its dominant political party, made a declaration of policy, on which both the people and the railroads can with justice to themselves and to each other stand. I quote it: “The public has the right to require from public service corporations just and impartial service, without rebates, discriminations or exactions and an efficient and courteous performance of their duties.”

“Such corporations, on the other hand, are entitled to just and fair treatment and of the equal protection of the law; and capital invested in such enterprises should not be denied the opportunity of earning just and reasonable compensation. We favor legislation which will safeguard the rights of the public as against such corporations, but condemn any legislative attempts to cripple such corporations by enactments which are harsh, retaliatory or inspired by a spirit of hostility.” And that statement of the position of my State to the Railroads I adopted as my view, and the only attitude a sovereign power can take with wisdom and with justice. We will not yield our sovereign right to make laws operative within our borders on all who may come within them, or willingly surrender our power to regulate and control our internal commerce, but I indulge the hope and the firm belief that we shall act with wisdom, justice and moderation, which will herald an era of better feeling between the railroads and the people—“an era of equal rights under just and impartial laws.”

Notwithstanding the marvelous industrial progress of the South, we are yet in the infancy of our development. New mines are to be opened, new mills are to be constructed, and new farms reclaimed from primeval forests. We possess a soil capable of producing, in the greatest abundance, every variety of produce known to the temperate zone. The application of scientific methods to agriculture has shown that there is no limit to the productive capacity of our soil. With a climate which rivals in its salubrity the most favored sections of the old or the new world, with unequaled timber and mineral wealth, our agricultural lands, in proportion to their productive capacity, are today the cheapest in the Union.

Yet without additional modes of cheap and easy transit between the different sections of our States and to the markets of the world, our industrial development must necessarily be retarded.

Hence the people of my State and of the South generally recognize, not only the importance of utilizing our great waterways, but of securing the construction of additional railroads in every part of our section. Our production has grown more rapidly than our methods of transportation, and when that question has been solved with cheap and easy modes of transportation to the markets of the world, under the influence of our enterprising, intelligent and industrious citizenship, the States of the South, like waking giants, will move forward to greater, grander and more lasting triumphs in all the fields of progress and industrial development.

I am gratified to know from the declaration of the Chairman of the Inter-state Commerce Commission that rebates have almost entirely ceased to exist, and that the discrimination, heretofore largely responsible for the hostile feeling which may once have existed, has been to a great extent eliminated. There is no hostility on the part of the people of my section to railroad corporations. We believe that they should not only be entitled to just but even liberal returns on their investments. We recognize that in an undertaking so hazardous as the construction and operation of railroads, investments in these enterprises will cease, if these corporations are restricted in their earnings to the narrow limits of legal interest, and that the policy which would discourage railroad building would not only be unwise, but detrimental to the best interest of our section and our common country.

We fully recognize the marvelous work which the railroads have done towards the development of the industrial interests of the country. In annihilating distances they have broken down the walls of prejudice and caste, overthrown the narrow intolerance of provincialism, and strengthened the bonds of patriotic devotion to the institutions and great interests of our common country. We recognize that the Presidents of the great transportation corporations—the railroad map makers of the country—have shown marvelous

skill and genius in the great work they have undertaken. They have increased the facilities of transportation; they have constantly sought to secure new and improved plans and devices to add to the comfort and convenience of the traveling public; they have aided in the development of our forests, our mines and agriculture. If mistakes have been made, they were due to the folly of the State and Nation, in sitting with folded arms and not sooner exercising the power vested in them to protect the public.

Railroads honestly administered, which render the best service consistent with the security of the capital employed, a service which is impartial and without favoritism, are the most effective agencies of progress and commercial development. In insisting upon the sovereign power of the State to regulate intra-state rates, we are not seeking to restrict the operation of railroads, or to check their growth, or to prevent fair and even liberal returns on their investments, but only striving to stimulate their usefulness and efficiency by wise and just regulation. I am gratified to state to-night that at no period in the history of our State has there been a more cordial feeling between the people and the carriers, a feeling which has been produced by the recognition on the part of both that only by just and equal laws, which permit no discrimination or favoritism, can we secure permanent peace and mutual and friendly co-operation between the State and the Carrier.

I congratulate you tonight that the era of radicalism has passed and that we have reached that period when a wiser spirit of conservatism, based upon the recognition of the necessity of friendly co-operation and mutual good will, will dominate the legislation of State and Nation. In that spirit let us go forth bravely to meet the issues of the future, determined that the great structure of commerce builded after so many years of strife and struggle, shall be made permanent and secure, by substituting charity for selfishness, friendship for hostility, and co-operation for warring competition.

Let us remember that our healing is not in governmental ownership, in radical legislation, in bitter and savage wars of competition, but will alone be found in friendly co-operation, in the majestic supremacy of the law, and in that still small voice that speaks to our consciences and our hearts, prompting us to a wider, wiser and grander humanity and fraternity.

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